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## **U.S. Department of State**

### **Hong Kong Country Report on Human Rights Practices for 1998**

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#### **HONG KONG**

Hong Kong reverted from British to Chinese sovereignty on July 1, 1997. As a Special Administrative Region of the People's Republic of China, it enjoys a high degree of autonomy except in defense and foreign affairs and remains a free society with legally protected rights. The Basic Law, approved in 1990 by China's National People's Congress, provides for fundamental rights and serves as a "mini-constitution." A chief executive, selected by a 400-person selection committee chosen by a China-appointed preparatory committee, wields executive power. A legislature composed of directly and indirectly elected members was sworn in on July 1. Upon reversion, China, which had objected to the electoral rules instituted by the British colonial government, dissolved Hong Kong's first fully elected Legislative Council. A 60-member Provisional Legislature, chosen by the selection committee that named the Chief Executive, took office on July 1, 1997. Critics contended that the selection of the Provisional Legislature had no basis in law and was designed to exclude groups or individuals critical of China. On July 1, a Legislative Council elected on May 24 replaced the Provisional Legislature. Twenty seats were elected on a geographic basis through universal suffrage, 30 seats through functional (occupational) constituencies, and 10 seats through indirect election. Despite complaints that the election laws favored pro-China candidates in the geographical constituencies and severely limited the franchise in the functional constituencies (the number of voters in the functional constituencies was reduced from 2.5 million to 147,000), no parties boycotted the elections. The 53 percent voter turnout was the highest in Hong Kong's history. The parties and independents in the prodemocracy camp won 14 of the 20 seats elected on a geographic basis. The power of the legislature and of individual legislators is substantially curtailed by restrictions on the legislation that members may introduce and by a requirement for majorities among members elected from both geographic and functional constituencies. The judiciary is independent.

A well-organized police force maintains public order under the firm control of civilian authorities. The 4,000 Chinese troops sent to Hong Kong to replace the British military garrison have maintained a low profile and did not perform police functions. There were reports that some members of the police committed human rights abuses.

Hong Kong is a major regional and international trade and finance center. It is a principal gateway for trade and investment with China. A thriving free market economy operates with little government interference (a system provided for by the Basic Law for 50 years). The global economic crisis had a significant impact on the economy; per capita gross domestic product dropped from \$26,000 in 1997 to just over \$25,000 in 1998. Despite this, the Government has resisted calls for a change in the territory's free market system.

The Government generally respected the human rights of its citizens, however, human rights problems that existed both before and after the reversion to China included: Some degree of media self-censorship; limitations on citizens' ability to change their government and limitations on the power of the legislature to affect government policies; some limits on freedom of movement; violence and discrimination against women; and discrimination against the disabled and ethnic minorities. Human rights groups' concerns that revisions to the Public Order and the Societies Ordinances would undermine fundamental human rights thus far have proved unfounded.

## **RESPECT FOR HUMAN RIGHTS**

### **Section 1 Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Political and Other Extrajudicial Killing**

There were no reports of political or other extrajudicial killings.

There were four instances of death of detainees in police custody in the first 9 months of the year. The police coroner's office is investigating these deaths.

#### **b. Disappearance**

There were no reports of politically motivated disappearances.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law forbids torture and other abuse by the police, however, there were reports that police at times used excessive force against persons in custody. The law stipulates punishment for those who break these prohibitions, and disciplinary action can range from warnings to dismissal. Criminal proceedings may be undertaken independently of the disciplinary process. Allegations of excessive use of force are investigated by the Complaints against Police Office, whose work is monitored and reviewed by the independent Police Complaints Council, a body composed of public members appointed by the Chief Executive.

Although excessive use of force by police is not widespread, there are occasional complaints of force being used during interrogations to coerce information or confessions. In April four police officers were found guilty of assaulting a suspect to force a confession and sentenced to prison terms of between 4 and 6 months. They beat a suspected drug dealer and poured water in his ears and nose. In the first 9 months of the year, the Complaints Council received 647 complaints of assault. Of the 154 cases examined by the Council, 118 were withdrawn by the complainants, and 31 were deemed "not pursuable." Only five complaints were investigated, of which three were found to be false and two unsubstantiated. Human rights groups have called repeatedly for a more independent monitoring body noting long delays in hearing some allegations, the contrast between the relatively large number of complaints and the few that are substantiated, and the unwillingness of witnesses to substantiate complaints to the police due to fear of retribution.

Although conditions vary among facilities, prisons conform to international standards.

The Government permits prison visits by human rights monitors. Local justices of the peace regularly

inspect prisons, but these visits rarely are unannounced and justices of the peace speak with prisoners in the presence of Correctional Service Department staff. The Correctional Services Department's August ruling that prison officers' use of force in breaking up fighting between inmates in July was justified prompted widespread criticism and calls for the establishment of an independent board to monitor prison conditions.

#### d. Arbitrary Arrest, Detention, or Exile

Common law, precedents previously in force, and the Basic Law (which incorporates the International Convention on Civil and Political Rights) provide substantial and effective legal protections against arbitrary arrest or detention. Suspects must be charged within 48 hours or released. The average length of preconviction incarceration does not exceed 80 days.

Exile is not practiced.

#### e. Denial of Fair Public Trial

Hong Kong's independent judiciary has endured since the handover, underpinned by the Basic Law's provision that Hong Kong's common law tradition be maintained. According to the Basic Law, the courts may rule on matters that are the "responsibility of the Central People's Government or concern the relationship between the central authorities and the (Special Administrative) Region," but before making their final judgments (which are not appealable), the courts must seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress. When the Standing Committee makes an interpretation of the provisions concerned, the courts, in applying those provisions, "shall follow the interpretation of the Standing Committee." The National People's Congress vehicle for interpretation is its Committee for the Basic Law, composed of six mainland and six Hong Kong members. The Hong Kong members are nominated by the Chief Executive, the President of the Legislative Council and the Chief Justice. Human rights and lawyers' organizations have expressed concern that, if broadly applied and loosely interpreted, these exceptions to the Court of Final Appeal's power of final jurisdiction could be used to limit the independence of the judiciary. However, no such limitations have occurred and no issues thus far have been referred to the Basic Law Committee.

The Court of Final Appeal is Hong Kong's supreme judicial body. An independent commission nominates judges; the Chief Executive is required to appoint those nominated, subject to endorsement by the legislature. Nomination procedures ensure that commission members nominated by the private bar have a virtual veto on the nominations. The Basic Law provides that, with the exception of the Chief Justice and the Chief Judge of the High Court who may not have right of abode outside of Hong Kong, foreigners may serve on Hong Kong's courts. More than 40 percent of Hong Kong's judges come from other Commonwealth countries. Judges have security of tenure until retirement age (either 60 or 65, depending on date of appointment).

Beneath the Court of Final Appeal is the High Court, composed of the Court of Appeal and the Court of First Instance. Lower judicial bodies include the District Court (which has limited jurisdiction in civil and criminal matters), the Magistracy (exercising jurisdiction over a wide range of criminal offenses), the Coroner's Court, the Juvenile Court, the Lands Tribunal, the Labor Tribunal, the Small Claims Tribunal, and the Obscene Articles Tribunal.

The law provides for the right to a fair public trial, and this is respected in practice. Criticism followed the revelation in March that some juvenile courts did not allow public access, but the courts

clarified that courts should only be closed in exceptional circumstances when it was necessary to protect the identity of juvenile defendants. Trials are by jury, and the judiciary provides citizens with a fair and efficient judicial process.

Although the judiciary remains independent, human rights activists are concerned that the legal system may favor those closely aligned with China or powerful local institutions. These concerns were heightened when the Government decided not to prosecute the New China News Agency for alleged violations of the Privacy Ordinance (see Section 1.f.) and in March declined to prosecute a prominent newspaper editor accused of fraud. In April there was much controversy after the Provisional Legislature hastily passed the Adaptation of Laws (Interpretive Provisions) Ordinance, which replaced the word "crown" in Hong Kong legislation with the word "state" in hundreds of existing laws. The Government reviewed 17 laws, primarily antidiscrimination and environmental protection ordinances passed before the handover and determined that 16 should be amended specifically to encompass the State. However, the Government has not yet made a determination on the most controversial of these laws, the Privacy Ordinance.

Critics are concerned that the change would place Chinese government organs, particularly the New China News Agency, above the law, since laws that previously did not apply to the Crown now do not apply to the (Chinese) State.

In December the prosecution and execution in China of a Hong Kong gangster who had committed crimes in both Hong Kong and the mainland sparked controversy. International legal scholars concur that China had jurisdiction in the case. However, a number of human rights groups and lawyers expressed concern that the Hong Kong Government did not vigorously assert its jurisdiction or attempt to protect the rights of its residents arrested in the mainland. China's assertion of extraterritorial jurisdiction in the arrest of a mainland citizen in China for murders committed in Hong Kong also has been controversial. Talks on a rendition agreement between Hong Kong and China, which may help alleviate some of these jurisdictional problems, are ongoing. Since 1992 128 fugitives have been returned to Hong Kong from China through an administrative arrangement; none have been returned to China from Hong Kong.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law provides for the right of privacy, and the Government generally respects this right in practice. The Interception of Telecommunications Ordinance, passed by the Legislative Council in June 1997, requires the security forces to obtain a warrant from the High Court for a wiretap or mail interception. However, because the law specifies that the Government must name an effective date for the change, it has never been implemented. Responding to Legislative Council questioning on September 30, the Secretary for Security refused to reveal the number of government wiretaps.

For more than 20 years, the Independent Commission Against Corruption was vested with powers, including the right to authorize searches and detain suspects, that are normally exercised only by a judicial officer. Amendments to ordinances governing the Commission took effect in June 1997, depriving the Commission of the independent authority to issue arrest or search warrants. However, the Commission still does not apply the presumption of innocence in corruption cases, and criminal convictions are obtained by regarding any excessive, unexplained assets held by civil servants as ill-gotten until proven otherwise.

In 1996 the Government established the Office of the Privacy Commissioner for Personal Data (PCO) under the Personal Data (Privacy) Ordinance to prevent misuse and disclosure of data such as medical and credit records. The ordinance also prohibits matching sets of personal data without the consent of the subject individual or the commissioner, although some government departments were exempted in order to combat social welfare abuse and tax evasion. In the first 8 months of the year, the PCO received 225 complaints. In 1997 the PCO investigated 162 complaints; 8 were found to be in contravention of data protection principles and 7 were found to be in contravention of provisions in the Privacy Ordinance. The PCO issued 17 warning notices and 2 enforcement notices. In June a code of practice on the use of personal identity numbers and identity card copies went into effect.

There was public criticism in February when the Government decided not to prosecute the New China News Agency for failing to respond within the ordinance-specified time frame to a legislator's request for information about her in the Agency's files. The legislator filed a civil suit to obtain the information (see Section 1.e.). In June an intern who revealed the medical records of the Secretary for Justice to the press was convicted of violating the Privacy Ordinance.

## **Section 2 Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The Basic Law provides for freedom of speech, of the press, and of publication, and there was no apparent change in the tradition of respect for these freedoms after reversion; however, some journalists continued to practice a degree of self-censorship. Overall, the media has been outspoken in defending civil liberties. Reporting on the May elections generally was regarded as fair and balanced. However, the Basic Law also directs Hong Kong to pass laws prohibiting "treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets" (see Section 2.b.). The Interception of Communications Ordinance, passed by the Legislative Council in June 1997, nullified Section 33 of the Telecommunications Ordinance, which granted the Government wide-ranging powers to ban messages. However, this provision was never implemented, because the Government has not named a date for the changes to take effect. The Public Order Ordinance enables the Government to ban a demonstration on national security grounds, including as a factor whether it advocates independence for Tibet or Taiwan. In practice, this situation has not arisen and no applications for permits to demonstrate have been denied (see Section 2.b.).

Newspapers publish a wide variety of opinions. After July 1, 1997, there was neither a sharp increase nor decrease in coverage critical of China, but there were many more reports critical of the Hong Kong Government than there were before the reversion. People speak freely to the media. Political debate is vigorous, and numerous viewpoints, including stories and opinions critical of the Hong Kong and Chinese Governments and statements by leading Chinese dissidents, are provided in the mass media, in public forums, and by political groups. International media organizations operate freely. Sixteen major daily newspapers, 2 commercial television stations, and 2 commercial radio stations function with virtually no government control. The media were heavily affected by the Asian financial economic crisis and 400 journalists lost their jobs during the year.

Foreign reporters need no special visas or government-issued press cards. Many local reporters continue to enter China to cover sensitive stories related to Hong Kong, Taiwan, or the mainland. China still requires journalists--both foreign and local--to apply for permission to make reporting trips to the mainland. Those who bypass official channels--which many feel they must do to get the stories they want--risk violating Chinese regulations. At least one publication whose owner offended

China's leadership several years ago subsequently has been unable to get official permission for its reporters to cover events on the mainland.

There is a widespread impression among both journalists and the public that it is prudent to engage in a degree of self-censorship. The pressures on journalists are subtle--there are no direct orders to refrain from writing, but there is a wide perception of a need for special care toward topics of particular sensitivity to China: Leadership dynamics, military activity, or Taiwanese or Tibetan independence, although numerous articles on these topics continue to appear. Chinese-language journalists report a pervasive, if tacit, understanding that editors expect those reporting on China to be particularly certain of their facts and careful in their wording. Another source of pressure comes from the belief by some publishers and editors that advertising revenues or their business interests in China could suffer if they were seen to be too antagonistic to China or powerful local interests. For example, journalists have been told by their boards of directors not to publish stories about a prominent local businessman's property development project in Beijing. Journalists' associations also cite the Chinese Television Network's refusal to broadcast a documentary ("Cry Wolf") dealing with Xinjiang separatist movements as an example of self-censorship.

In March a Hong Kong member of the Chinese People's Political Consultative Conference, speaking in Beijing, attacked the government-owned Radio Television Hong Kong (RTHK) for producing programs critical of the Hong Kong and Chinese Governments. When asked by journalists for a comment, the Chief Executive's impromptu response was to suggest that a review of the station's role might be necessary, saying, "while freedom of speech is important, it is also important for government policies to be positively presented." However, the Chief Executive and the Chief Secretary, as well as senior Chinese leaders, later reiterated their support for Hong Kong's freedom of the press. There was also a groundswell of support for RTHK'S editorial independence. In April a Chinese diplomat in France warned a Hong Kong journalist to stop asking sensitive questions of visiting Chinese Premier Zhu Rongji. The warning sparked protests in Hong Kong, and Zhu later publicly reprimanded the diplomat. In September RTHK issued guidelines, which stressed that its editorial policy should be independent.

In May two persons were convicted under the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance of defacing the Hong Kong and Chinese flags during a peaceful protest in January. The ordinances were passed by the Provisional Legislature before reversion and enacted in July 1997.

In June the High Court found the editor-in-chief of a Chinese-language newspaper guilty of contempt of court for "scurrilous and racial" attacks against top judges and for ordering a 3-day "paparazzi-style" surveillance of a judge. Most observers, including the Hong Kong Journalists' Association, commented that the paper had breached professional ethics.

Although former Governor Christopher Patten's account of the prehandover negotiations and reforms was widely available throughout Hong Kong, the refusal of some bookstores to carry the book was cited by human rights groups as an example of commercial self-censorship. Films critical of China, such as "Kundun" and "Red Corner," were released.

In 1996 a code on access to information governing the provision of information by government agencies was extended to the entire Government. The code requires government departments to release information to the public unless there is a valid reason to withhold it. A department may withhold "sensitive" information in such areas as defense, security, external affairs, or law enforcement. Guidelines for access to information are provided to the public on an Internet web page.

The Government respects academic freedom. There is a wide range of opinions in lively debate on campuses. The issue of academic freedom generally has not caused much public comment, but there has been some debate over university management issues.

#### b. Freedom of Peaceful Assembly and Association

Freedom of assembly is practiced without significant hindrance. Article 23 of the Basic Law provides that Hong Kong shall enact laws to prohibit subversion, secession, treason, and sedition against the Chinese Government. The process of developing this legislation continues at a very deliberate pace, with no indication of when such laws may be enacted. Amendments to the Crime Ordinance, passed by the Legislative Council in June 1997, narrowed the definition of treason and sedition to include a "proven intention of causing violence or creating public disorder or a public disturbance." However, since the amendments stipulate that the Government must name the date when the change is to take effect, the Government has chosen not to enact the amendments until comprehensive legislation dealing with all the "Article 23 crimes" is developed. In the interim, preexisting provisions in the Crime Ordinance dealing with treason and sedition continue to apply.

A revised Public Order Ordinance, passed by the Provisional Legislature that took effect on July 1, 1997, reintroduced licensing for demonstrations (applications must be made at least 48 hours prior to a demonstration) and empowered the police to raise objections on national security grounds. In practice, however, the police have not denied any applications for demonstrations (see Section 2.a.). There is an average of four demonstrations per day, a rate slightly higher than the prereversion rate. However, demonstrators, particularly labor activists, complain that demonstrations often are limited to "designated areas" where they receive little public attention, and that police sometimes outnumber demonstrators. In March two Confederation of Trade Union demonstrators were prosecuted for using a megaphone during a strike. They were acquitted in May. A police order issued in September, while underlining that it is police "policy to facilitate as far as possible, all peaceful public order events," also stipulates that certain "internationally protected persons" are in addition to security entitled to "protection of their dignity." Human rights activists are concerned that the order may lead to the use of police tactics such as those employed during the September 1997 visit of Li Peng, when the police played classical music over loudspeakers to drown out the shouts of demonstrators. The independent Police Complaints Council ruled in March that those tactics were inappropriate.

Freedom of association is practiced without significant hindrance. In the first 9 months after reversion, 626 societies were registered and no applications for registration denied. Nevertheless, human rights groups also have expressed concern that the Amended Societies Ordinance, which like the Public Order Ordinance was passed by the Provisional Legislature, could be used to restrict political activity. The Societies Ordinance requires that new societies must apply for registration within 1 month of establishment. The Government may refuse registration if it believes that the refusal is necessary in the interests of national security, public safety, public order, or the protection of the rights and freedom of others. The Government also may refuse to register a political body that receives support from a foreign political organization or a Taiwan-based political organization.

#### c. Freedom of Religion

The Basic Law provides that the Government respect religious freedom and activities, the Bill of Rights Ordinance prohibits religious discrimination, and the Government respects these provisions in practice. Government policy and general practice ensure freedom of religion.

Some religious leaders noted that the Basic Law, which calls for ties between Hong Kong and mainland religious organizations to be based on "nonsubordination, noninterference and mutual respect," could be used to limit such contacts. However, there were no reports of any limits being applied or proposed.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

There is freedom of movement within Hong Kong, and travel documents are obtained freely and easily. However, there are some limits on travel to the mainland imposed by the Chinese Central Government.

As was the case before the reversion, the Taiwan passport is not recognized as valid for visa endorsement purposes. During the year, regulations were changed to allow residents of Taiwan in transit to the mainland to remain in Hong Kong for up to 7 days without a visa. After protests from Taiwanese visitors, on July 20, the Hong Kong Government stopped stamping the passports of such visitors with warnings not to display Taiwanese symbols or emblems, fly flags, or "engage in behavior embarrassing to the Special Administrative Region."

Chinese authorities do not permit a number of Hong Kong human rights activists to visit the mainland. In August well-known Chinese labor organizer and political dissident Han Dongfang received a 3-year Hong Kong work permit. As it has since his expulsion from China in 1993, the Chinese Government continued to refuse him entry into China.

In July 1997, the Provisional Legislature passed amendments to the Immigration Ordinance requiring mainland-born children claiming the right of abode through their parents to obtain prior endorsement (by means of a certificate of entitlement) from the Chinese Government. The Government claimed that such a requirement was necessary to keep the estimated 66,000 children with the right of abode from overwhelming Hong Kong's social welfare and education systems. From July 1997 until March 1998, more than 17,000 such children were admitted to Hong Kong. However, more than 1,500 minors in this category who entered Hong Kong without the required certificate of entitlement are subject to deportation. In October 1997, the High Court declared that a provision requiring children born out of wedlock to derive their right of abode through their mothers and not their fathers contravened the Basic Law. On January 26, the High Court upheld the right of abode claims of 81 test case plaintiffs. A government appeal of the ruling was scheduled for hearing in the Court of Final Appeal in January 1999.

The 1951 U.N. Convention Relating to the Status of Refugees was not extended to Hong Kong. On a case-by-case basis, the Director of Immigration has discretion to grant refugee status or asylum in cases of exceptional humanitarian or compassionate need.

In January the Government abolished its port of first asylum policy. Approximately 1,700 Vietnamese sought refugee status in Hong Kong in 1997. The voluntary repatriation program run by the United Nations High Commissioner for Refugees (UNHCR) ended in August 1997. In May the last detention center for Vietnamese refugees was closed. In the first 9 months of the year, 1,350 Vietnamese were repatriated under the (involuntary) orderly repatriation program. A total of 1,080 refugees remain in Hong Kong, among them 660 stateless (Vietnamese origin) asylum seekers and 280 Vietnamese formerly in China. While awaiting resettlement, most live in Pillar Point Center, an open camp, and are allowed to seek employment and enroll their children in local schools. Approximately 12 families from other countries have been admitted as refugees and receive a

subsistence allowance from the UNHCR, but are allowed neither to seek employment nor to enroll their children in local schools.

In two separate cases in September and October 1997 courts ruled that the detention of 288 Vietnamese illegal migrants who were formerly in China was illegal. The Vietnamese migrants' suit seeking to prevent the Government from returning them to the mainland still is pending. Meanwhile, they remain free on bail and live in the Pillar Point Camp. In the first 8 months of the year, 9,479 illegal immigrants were returned to the Chinese mainland.

### **Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government**

Residents' right to change their government is limited by voting regulations that provide for the election of the Chief Executive by an appointed selection committee of 400, the direct election of only a limited number of Legislative Council members, and the addition of indirectly elected members to the elected district boards and municipal councils. In addition, while the approval of the Chief Executive, two-thirds of the legislature, and two-thirds of Hong Kong's National People's Congress delegates is required to place an amendment to the Basic Law on the agenda of China's National People's Congress, it is the National People's Congress which has the power to actually amend the Basic Law.

The government structure is three-tiered, and consists of the Legislative Council, the provisional municipal councils, and the provisional district boards. C.H. Tung is Chief Executive.

The Chief Executive was chosen by a 400-member selection committee chosen by the 150-member preparatory committee, itself appointed by the Chinese Government. The Basic Law provides for elections for chief executive in 2002 and 2007, by a "broadly representative election committee" of 800 local residents appointed by China. The Basic Law also permits amendment of the Chief Executive selection process after 2007 by a two-thirds majority of the Legislative Council, with the consent of the Chief Executive and the Standing Committee of the National People's Congress, with universal suffrage and direct elections as the ultimate goal.

A provisional legislature, appointed by the same 400-member committee that appointed the Chief Executive, began working before the reversion and was sworn in at midnight on July 1, 1997; it served until June 30. Although the Provisional Legislature included 33 of 34 legislators from the 1995 Legislative Council who sought inclusion, the Democratic Party and several independents declined to seek seats in what they deemed an illegitimate body, which they claimed lacked a legal foundation and transparency, and excluded groups, parties, and individuals critical of China. The Provisional Legislature repealed several laws that had been enacted by the elected Legislative Council to enhance civil and political rights, including: amendments to the Bill of Rights Ordinance; the Employee Right to Representation, Consultation and Collective Bargaining Ordinance; the Employment (Amendment) Ordinance 1997, and the Trade Unions (Amendment) Ordinance 1997 (see Section 6). A lawsuit challenging the constitutionality of the Provisional Legislative Council was unsuccessful.

Elections for Hong Kong's first postreversion Legislative Council were held on May 24. Seventy percent of eligible voters registered, and a record 53 percent of registered voters cast ballots, half again as many as in any previous election. Twenty seats were elected directly from geographic districts through universal suffrage, 30 from functional (occupational) constituencies, and 10 by votes of a committee of local elected officials. The functional constituencies were drawn more narrowly than the nine broad functional constituencies of the 1995 Legislative Council, and the total number of

potential voters in functional constituencies was cut from 1.15 million to 147,000 (a figure close to that used in elections through 1991). There was general acceptance of the electoral districts proposed in October 1997 by the Electoral Affairs Commission. A bill calling for an accelerated time line for direct elections was defeated in the Legislative Council in July.

The ability of the legislature to influence policy is limited substantially by Basic Law provisions that require separate majorities among members elected from geographic and functional constituencies in order to pass a bill introduced by an individual member. The Basic Law also prohibits the Legislative Council from putting forward bills that affect public expenditure, political structure, or government operations. The Chief Executive's approval is required before bills affecting government policy may be submitted. There was considerable controversy in July when the Government asserted that the Legislative Council could not propose amendments to government bills that affected government policy without the approval of the Chief Executive. At year's end, the issue remained under debate.

In July 1997, the membership of the elected district boards and municipal councils was expanded by 25 percent. The same selection committee that chose the Provisional Legislature and the Chief Executive, chose the new members, and the bodies became known as the provisional district boards and provisional municipal councils. On October 7, the Chief Executive announced the Government's intention to submit a bill to the Legislative Council abolishing the provisional municipal councils when the terms of their current members expire in 1999. The district boards, which are to be elected, are to remain with functions to be specified in law. On October 9, the Government briefed the Legislative Council on its extensive public consultations on the regional boards and published the submissions that it had received from the public and concerned groups.

Hong Kong sends 36 delegates to China's National People's Congress (NPC). This is an important group since placing proposed amendments to the Basic Law on the agenda of the NPC requires the approval of two-thirds of Hong Kong's NPC delegates. Hong Kong's NPC delegates also are entitled to sit on the Election Committee that chooses 10 of the Legislature's 60 members. Hong Kong's NPC delegates were selected by the same committee that appointed the Chief Executive and the Provisional Legislature. Politicians and human rights activists criticized the selection process as undemocratic and lacking transparency and noted that New China News Agency Director Jiang Enzhu, who is not a Hong Kong permanent resident, is one of Hong Kong's 36 delegates.

Women are playing a larger role in politics, with larger numbers running for public office than ever before. Women held 9 of the 60 seats in the Provisional Legislature and 10 of the 60 Legislative Council seats. Women hold 7 of the 26 government directorate-level posts.

#### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

Dozens of local and international nongovernmental organizations (NGO's) operate freely, despite concerns about possible restrictions under the revised Societies Ordinance. These organizations have thriving contacts with the local community and with groups overseas. Government officials are cooperative and responsive to their views. In July the Government granted the local chapter of Amnesty International a special fund raising permit for the first time.

The 1988 Ombudsman Ordinance established the Office of the Ombudsman, which has wide powers to investigate and report on grievances from members of the public as a result of administrative actions of the executive branch and other designated public bodies. However, the Ombudsman does not have any oversight authority over the police, the Independent Commission against Corruption,

the Equal Opportunities Commission, or the Office of the Privacy Commissioner for Personal Data. The Ombudsman may investigate complaints of noncompliance with the code on access to information by the government departments, including the police and Independent Commission against Corruption. With regard to election-related complaints, the Ombudsman is empowered only to investigate complaints made against the Registration and Electoral Office, but not the Electoral Affairs Commission. Thus, the Ombudsman's human rights role regarding liberty of persons, freedom from arbitrary and unlawful arrest and detention, equality, and related matters is limited.

The Ombudsman may publish investigation reports in which the identity of the complainant has been disguised. In addition to responding to public complaints, the Ombudsman may initiate investigations on his own. The Ombudsman may report to the Chief Executive if he believes that his recommendations to the organizations under his jurisdiction have not been acted upon or if there are serious violations; the Chief Executive is bound by law to present this report to the Legislature.

According to the Basic Law, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights apply, with certain restrictions, to Hong Kong. In 1996 the United Kingdom filed reports on Hong Kong under both covenants with the U. N., which were to serve as a "baseline." The Chinese Government has agreed to transmit Hong Kong's 1998 reports, without editing, to the U. N. These reports were prepared without interference from the Chinese Government, but local NGO's complained that they were not consulted fully enough on the contents of the reports.

### **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

There are no laws prohibiting discrimination on the basis of race. After the passage of laws in 1995 banning discrimination on the basis of sex and disability, an Equal Opportunities Commission was established in 1996. Women's groups and others have criticized the Commission for passivity in combating discrimination and for emphasizing conciliation instead of acting as a watchdog or pursuing court cases. However, the Government has begun to bring cases against discriminatory employment advertisements. In the first 9 months of the year, 18 cases under the Sex Discrimination Ordinance and 1 case under the Disability Discrimination Ordinance were brought to court. However, fines, particularly against newspapers for carrying discriminatory advertisements, were very light.

In June 1997, the Legislative Council enacted the Family Status Discrimination Ordinance, which protects persons whose marital status changes, who have children, or who are responsible for caring for another family member, such as a child or an elderly person.

According to the Basic Law, English may be used as an official language by the executive, legislative, and judicial branches. Almost all civil cases and most criminal cases are heard in English. To help remedy this imbalance, the Government has increased the number of officers in the Legal Aid Department proficient in Chinese. A 1996 pilot scheme for simultaneous interpretation in some court proceedings failed, but the Government expanded the use of bilingual prosecution documents and indictments. All laws are available in Chinese, and in 1997 the High Court heard the first jury trial ever conducted in Cantonese.

### **Women**

Violence against women remains a significant problem, particularly among new immigrants from China. The only law to protect battered women is the 1987 Domestic Violence Ordinance, which allows a woman to seek a 3-month injunction against her husband (extendible to 6 months). Domestic

violence also may be prosecuted as common assault. The Government enforces the laws and prosecutes violators, but punishment remains lenient; of the 344 charges of "family violence" from April to September of 1997 only 33 resulted in convictions. Half of those convicted were fined and only four were imprisoned. Of the 60 spousal abuse cases in the first 9 months of the year that resulted in legal action, 41 were awaiting trial, 1 received a 6-month sentence and fine, 1 received a 2-month sentence, 4 were fined between \$200 and \$450, 3 received a suspended sentence, 1 received a police warning and 1 was acquitted. Women do not seek help when subject to violence; cultural factors and inadequate information about available assistance and resources cause many cases of spousal abuse to go unreported. To address this, in 1995 the Government set up a working group on battered spouses. In 1996 it crafted multidisciplinary procedural guidelines on handling battered spouse cases. It also funds programs such as family life education counseling, a hot line service, temporary housing, legal aid, and child protective services; and has initiated public education and media programs.

The general incidence of rape is low. There were 74 cases reported in 1997 and 63 in the first 8 months of the year.

Women face significant discrimination in employment, salary, welfare, inheritance, and promotion (see Section 6.e.). Unemployment is higher among women than men. Despite equal educational opportunities, women are disproportionately represented in the lower echelons of the work force. As a result of 1994 revisions to inheritance statutes, the law treats men and women equally in inheritance matters, although women still face discrimination based on traditional practices.

During 1991-95, the number of female secondary student candidates who took university advanced-level examinations accounted for between 51 and 55 percent of the total, and the number of female candidates who matriculated at universities accounted for between 52 and 56 percent of all matriculating candidates. Women are entering fields such as medicine in greater numbers, although there are few women in specialties like surgery.

## Children

The Government is committed firmly to children's rights and welfare through well-funded systems of public education, medical care, and protective services. It supports programs for custody, protection, day care, foster care, shelters, small group homes, and assistance to families. The age of criminal responsibility for children in Hong Kong is 7, although it must be proved that a child under the age of 14 understood the consequences of his actions.

Child abuse and exploitation are not widespread, but are increasing. There are no specific laws dealing with child pornography. In 1997 there were 744 child sexual abuse cases reported to the police and 356 cases of physical abuse. For the first 8 months of the year, the numbers were 489 and 142 respectively. In 1995 the police set up a child abuse investigation unit to improve the treatment of victims. In 1996 legislation was passed making it easier for child victims to testify in court by using an interviewing suite for recording statements. Legal penalties for mistreatment or neglect of minors also were increased substantially. A witness support program also was launched in 1996 to help child witnesses in need. A child witness information kit in Chinese, with books explaining legal and court proceedings was published in 1996 to help reduce anxiety, and a child care bill was passed in May to prevent unsuitable persons from providing child care services and to facilitate the formation of mutual help child care groups.

## People With Disabilities

Discrimination against the physically and mentally disabled persists in employment, education, and the provision of some public services. The 1995 Antidiscrimination Law called for improved building access and sanctions against those who discriminate. In 1997 amendments to the Buildings Ordinance updated design requirements. However, despite inspections and occasional closure of noncompliant businesses, access to public buildings and transportation remains a serious problem. Advocates for the disabled complained that limited access for the disabled at polling stations made voting difficult; for example, only 36 of the 96 subsector election polling stations were accessible to the disabled. The Government has an integrated work extension program in sheltered workshops and has expanded vocational assessment and training. No comprehensive statistics are available on the number of disabled persons in the workforce. There are about 4,600 disabled persons employed as civil servants in a civil service work force of 184,638--about 2.5 percent. In the first 8 months of the year, the Selective Placement Division of the Labor Department found jobs for 979 of 2,363 disabled job seekers. Approximately 9,000 students in a school population of 919,620, or just under 1 percent, are disabled. A pilot integration program launched in 1997 offered places to 46 mildly disabled students in regular schools. In 1997 the Government started a special university admission scheme for the disabled.

#### National/Racial/Ethnic Minorities

There are no laws prohibiting discrimination on the basis of race. A government "Code of Practice for Employers" designed to prevent discrimination states that race should not be considered when hiring employees. However, racial discrimination in employment and admission to public restaurants and clubs is common. Foreign domestic workers, most of them from the Philippines, are particularly vulnerable to discrimination.

### Section 6 Worker Rights

#### a. The Right of Association

The law provides for the right of association and the right of workers to establish and join organizations of their own choosing. Trade unions must be registered under the Trade Unions Ordinance. The basic precondition for registration is a minimum of seven persons who serve in the same occupation. The Government does not discourage or impede the formation of unions. In the first 8 months of the year, 12 new trade unions were registered. By the end of 1997, there were 563 trade unions comprising 538 employee unions and 25 mixed employer-employee unions. Approximately 22 percent of Hong Kong's 3.1 million salaried employees and wage earners belong to a labor organization.

Work stoppages and strikes are permitted. However, there are some restrictions on this right for civil servants. There were six strikes in the first 8 months of the year and several work stoppages or slowdowns, the largest, in September, involving thousands of Hong Kong telecommunications workers. In 1997 there were 7 strikes involving 418 workers. Although there is no legislative prohibition of strikes, in practice, most workers must sign employment contracts that typically state that walking off the job is a breach of contract that can lead to summary dismissal.

To date, Hong Kong has amended labor legislation and taken administrative measures to apply 49 International Labor Organization (ILO) conventions. In the Basic Law, China committed to adhere to these conventions (see Section 6.b.).

## b. The Right to Organize and Bargain Collectively

In 1997 the Legislative Council passed three laws that greatly expanded the collective bargaining powers of workers, protected them from summary dismissal for union activity, and permitted union activity on company premises and time. The new ordinances would have enabled full implementation of the ILO's Conventions 87 (which was ratified with reservations in 1963), 98, and 154. However, in October 1997, after consultation with the Labor Advisory Board, the Provisional Legislature repealed the Employee's Right to Representation, Consultation, and Collective Bargaining Ordinance of 1997 and the Employment (Amendment) Ordinance 1997, and amended the Trade Union (Amendment) Ordinance. The repeal removed the new legislation's statutory protection against summary dismissal for union activity; the Government argued that existing law already offered adequate protection against unfair dismissal arising from antiunion discrimination.

In October 1997 the Provisional Legislature promulgated the Employment and Labor Relations (Miscellaneous Amendments) Bill. This bill permits the cross-industry affiliation of labor union federations and confederations and allows free association with overseas trade unions (although notification of the Labor Department within 1 month of affiliation is required), but removes the legal stipulation of trade unions' right to engage employers in collective bargaining; bans the use of union funds for political purposes; requires the Chief Executive's approval before unions can contribute funds to any trade union outside of Hong Kong; and restricts the appointment of persons from outside the enterprise or sector to union executive committees. The Confederation of Trade Unions promptly filed a complaint against the Government for violation of ILO conventions 87, 98, and 154. In November the ILO Committee on Freedom of Association concluded that the new labor ordinance breached conventions 87 and 98 and recommended that the Government take legislative action to remedy the situation. The Government has not commented.

With the repeal of the short-lived collective bargaining legislation, the prereversion framework continued: There were no laws that stipulated collective bargaining on a mandatory basis. Wage rates in a few trades like tailoring and carpentry were determined collectively in accordance with established trade practices and customs rather than as a statutory mechanism. In practice, collective bargaining is not practiced widely. Unions generally are not powerful enough to force management to engage in collective bargaining. The Government does not encourage it, since the Government itself does not engage in collective bargaining with civil servants' unions but merely "consults" with them.

The Labor Relations Division of the Department of Labor affords free nonbinding conciliation services to employers and employees involved in disputes that may involve statutory benefits and protection in employment as well as arrears of wages, wages instead of notice, or severance pay. The Department of Labor takes a positive attitude towards the participation of trade unions in such dispute negotiations. In 1997 the Labor Relations Division handled 161 trade disputes and 20,404 claims, more than half of which arose from termination of contract or dismissal cases. Approximately 15 percent of these trade disputes and claims were settled with Labor Relations Division conciliation.

The Employment Ordinance includes provisions protecting against antiunion discrimination. Violation of the antiunion discrimination provisions is a criminal offense the maximum fine for which was increased in 1995 to \$12,500. Employees who allege such discrimination have the right to have their cases heard by the Labor Relations Tribunal. The Tribunal may order reinstatement of the employee, subject to mutual consent of the employer and employee. If no such order is made, the Tribunal may award statutory entitlements (severance pay, etc.) and compensation. The maximum amount of compensation is \$20,000. However, labor activists complain that the Labor Relations

Tribunal's tendency to push conciliation rather than issue orders discourages complaints.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

The use of forced labor is prohibited in the Hong Kong Bill of Rights Ordinance. While this legislation does not specifically prohibit forced or bonded labor by children, there were no reports of such practices.

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Employment of Children Regulations prohibit the employment of children under the age of 15 in any industrial establishment. Children 13 and 14 years of age may be employed in certain nonindustrial establishments, subject to conditions aimed at ensuring a minimum of 9 years' education and protecting their safety, health, and welfare. In 1997 the Labor Department conducted 158,936 workplace inspections and issued 10 summonses for violations of the Employment of Children Regulations. Of these, nine resulted in convictions with total fines of \$4,000. Work hours for young persons 15 to 17 years of age in the manufacturing sector remain limited to 8 hours per day and 48 hours per week between 6 a.m. and 11 p.m. Overtime is prohibited for all persons under the age of 18 in industrial establishments. Employment in dangerous trades is prohibited for youths except 16- and 17-year-old males. The Labor Inspectorate conducts workplace inspections to enforce compliance with these regulations. While provisions against forced or compulsory labor do not specifically refer to children, there were no reports of such practices (see Section 6.c.).

#### e. Acceptable Conditions of Work

There is no statutory minimum wage except for foreign domestic workers. As of December, the minimum wage for such workers was about \$500 a month. Because the law also requires employers to provide foreign domestic workers with housing, worker's compensation insurance, travel allowances, and food or a food allowance in addition to the minimum wage, foreign domestic workers have a decent standard of living. However, there are an increasing number of credible reports of foreign domestic workers, who are subject to deportation if they are dismissed and who are thus less likely to raise formal complaints, being forced illegally to accept less than the minimum wage and unacceptable living conditions.

Aside from a small number of trades where a uniform wage structure exists, wage levels customarily are fixed by individual agreement between employer and employee and are determined by supply and demand. Some employers provide workers with various kinds of allowances, free medical treatment, and free subsidized transport. The average wage generally provides a decent standard of living for a worker and family. However two-income households are the norm.

In order to comply with provisions in the Sex Discrimination Ordinance, provisions in the Women and Young Persons (Industry) Regulations that had prohibited women from joining dangerous industrial trades and limited their working hours, including compulsory weekly rest days, were dropped in 1997.

Hong Kong's Factory Inspectorate Division was restructured in 1996 as part of a government effort to strengthen its safety and health promotion and enforcement program. The new division--part of a new

occupational safety and health branch of the Labor Department--comprises four units: An operations division covering field services such as safety and health advice; a support services division responsible for technical support services; a planning and training division; and a legal services division charged with processing and conducting prosecutions.

The Factories and Industrial Undertakings Ordinance and its 27 sets of subsidiary regulations regulate safety and health conditions. The Labor Department conducted 82,278 inspections of industrial and nonindustrial workplaces in 1997 and issued 2,265 summonses (933 of which resulted in convictions, with a total of \$2.6 million in fines), 36 suspension orders, and 1,848 improvement notices. Worker safety and health has improved, due in part to the transfer of many manufacturing jobs to factories across the Chinese border, but serious problems remain, particularly in the construction industry. In 1997 a total of 62,800 occupational accidents (43,300 of which were classified as industrial accidents) were reported, of which 58 were fatal. Employers are required under the Employee's Compensation Ordinance to report any injuries sustained by their employees in work-related accidents. There is no specific legal provision allowing workers to remove themselves from dangerous work situations without jeopardy to continued employment.

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